

*CONSTITUTIONAL GUARANTEES OF THE RIGHT TO FORM AND JOIN TRADE  
UNIONS IN 193 COUNTRIES*

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## **Introduction**

The right to unionize is enshrined in the earliest United Nations (UN) agreements and is reaffirmed in many subsequent international human rights conventions. The Universal Declaration of Human Rights, which was adopted in 1948 and all 193 UN member states have agreed to states that ‘[e]veryone has the right to form and to join trade unions for the protection of his interests’ (UN DHR, 1948, Article 23). The International Covenant on Economic, Social, and Cultural Rights (ICESCR), adopted in 1966 and ratified by 160 countries, expands upon what is included in the right to unionize and establishes that ‘[n]o restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.’

The right to unionize can play a critical role in ensuring that individuals are protected from discrimination, harassment, and exploitation at work. Constitutional guarantees of the right to unionize are fundamental to ensuring that labor legislation will be enforced and that workers are able to negotiate for better wages, working conditions, and benefits (Fairris, 2006; Schmitt et al., 2007; Selwyn, 2011).

The benefits of the right to unionize can also extend beyond the workplace by ensuring a political voice for union members. Strong collective bargaining can improve governments’ attention to issues impacting low- and middle-income workers who previously may not have been able to have a voice in political processes (Andrae & Beckman, 2013; Crouch, 2000; Milner & Mathers, 2013; Wright, 1998). Unions have played critical roles in improving labor legislation and strengthening social protections floors (Dubofsky, 1994; Ebbinghaus, 2011; Seekings, 2004). Even in settings where trade union membership has decreased over time, unions continue to exert political influence and protect against cuts to the social protection floor (Crouch, 2000; Milner & Mathers, 2013).

Constitutional guarantees of the right to unionize or associate can be used to protect vulnerable workers from changes in governments and expand the role of unions for protecting workers' rights and interests. For example, in Canada, when a more conservative government repealed legislation that ensured trade union and collective bargaining rights for agricultural workers in Ontario, the Supreme Court ruled that this action violated constitutional guarantees of the right of association (*Dunmore v. Ontario (Attorney General)*, 2001). In India, a constitutional provision ensuring workers' participation in management of industries was also used to ensure the right of workers to be heard when a company is deciding to close or continue operations (*National Textile Workers' Union v. Ramkrishnan*, 1982).

This article presents new finding on the quality of the right to unionize in constitutions around the world. It examines how the right to unionize varies by region around the world. We examine whether fundamental guarantees of the right to unionize have changed over time in response to increasing globalization or the more recent financial crisis. Finally, we investigate whether protections of the right to unionize explicitly extend to cover women, religious and ethnic minorities, and foreign citizens.

## **Methodology**

### ***Data Source***

In order to obtain the information on the right to unionize necessary for this study, a coding team fluent in several official UN languages reviewed the constitutions of 193 UN member states as amended and in force to two points in time: August 2007 and May 2014. Constitutions were retrieved from government sources in their original languages and in official English, French or Spanish translations. When government-provided versions of constitutions were unavailable, these documents were located using three additional

resources: *Constitution Finder*, a database of sources for constitutions from the University of Richmond; HeinOnline's *World Constitutions Illustrated*; and *Constitutions of the Countries of the World*. When retrieving constitutions from non-governmental sources, we prioritised documents made available by the UN, universities and legal institutes.

While the vast majority of countries have codified constitutions, there are a few countries that either do not have a written constitution or that have a series of constitutional laws, rather than a single text. In both cases, we identified and coded those documents or laws that are considered to have constitutional status. If clauses of a constitution explicitly stated that other pieces of national legislation had constitutional status, these laws were collected and coded as well. To our knowledge, Myanmar was the sole country that neither had a constitution nor any form of constitutional documents in force as of August 2007.

Each constitution was carefully reviewed in its entirety by two coders. Through this process, we identified and captured constitutional text relevant to the right to form or join unions. The following sections describe the types of provisions we included in our conceptualisation of this rights, and how we captured the varying levels of strength and specificity with which it was granted.

### ***Categories analysed***

#### *The right to unionize*

Our right to unionize captures constitutional references to join or form unions, employees' associations, and labor organizations. We also included references to the right to associate for collective bargaining. The right to strike alone is not considered equivalent to the right to form or join unions. Constitutional references to the right of association, freedom to associate, right to assembly, freedom to demonstrate, or freedom to meet that did not specifically mention unions, labor organizations, or collective bargaining were captured separately. In this paper, these rights are analyzed separately as a weaker level of protection

of the right to unionize as they may be interpreted by the courts to protect workers' right to unionize.

#### *Categorising bases of protection*

Constitutional references to the right to unionize were categorised according to the group covered and the level of protection granted. We captured rights protections across gender, age, socioeconomic status, political opinion, religious belief, racial or ethnic group, linguistic group, disability, sexual orientation and identity, citizenship, national origin, imprisonment, and criminal record. Protections for citizens that we analysed in this study were coded when the constitution specified that everyone, all citizens, or workers possessed the right to unionize.

Among constitutions that addressed the right to unionize for specific groups, the most common guarantees were related to gender, ethnicity, and religion. This study therefore describes constitutional protections of the right to unionize based on gender, ethnicity, and religion. We coded the right to unionize as granted based on gender when provisions specifically mentioned 'women and men,' 'gender,' and 'sex.' We considered the right to unionize to be protected on the basis of ethnicity when provisions mentioned 'race,' 'ethnicity,' 'place of origin,' 'color,' or 'tribe.' We considered the right to unionize to be protected on the basis of religion when provisions mentioned 'religion,' 'creed,' or 'faith.' In cases where constitutions granted a right to unionize universally, but specified that all citizens enjoyed constitutional rights regardless of gender, ethnicity, or religion, we considered the right to be granted specifically based on gender, ethnicity, and religion. For example, if a constitution stated that 'everyone has a right to form unions' and also specified that 'men and women enjoy equal rights,' we considered this equivalent to a provision that 'men and women have a right to form unions.'

Some constitutions also explicitly provide for possible exceptions to the right to unionize for non-citizens. We captured references to the right to unionize for non-citizens when they mentioned ‘non-citizens’, stipulated ‘citizenship’ as a requirement for the exercise of the right to unionize, or permitted differential treatment of those who are not citizens. Provisions were considered to refer to non-citizens when they mentioned ‘aliens’, ‘foreigners’, ‘foreign nationals,’ ‘foreign subjects,’ ‘apatrids,’ ‘stateless persons,’ ‘persons without citizenship,’ or guaranteed enjoyment of the right to unionize on the basis of ‘nationality’ or ‘citizenship’.

#### *Categorising levels of protection*

Constitutions varied in the degree to which they protected the right to unionize. This study distinguishes among countries that allow the right to unionize to be restricted for certain groups or all citizens and those that guaranteed the right using unequivocal language.

We categorized the right to unionize as ‘guaranteed’ when constitutions granted protection unequivocally and in authoritative language, stated the right was explicitly enforceable, or declared its violation to be illegal.

We also captured cases where constitutions permitted or specified exceptions to the right to unionize for all citizens or specific groups. These include cases where the right to unionize can be abridged and where full exercise of the right is limited or may be limited to citizens or citizens by origin.

#### *Categorising constitutions by region and era*

This study describes guarantees of the right to unionize in the constitutions in force and as amended to May 2014 in 193 countries. Three analyses of the constitutional right to unionize for citizens were conducted. First, in order to assess how constitutional protections vary around the world, we analyzed the presence of the right to unionize by region using the World Bank’s classification of countries by region.

Second, in order to assess how constitutional protections of the right to unionize have changed over time in the face of increasing globalization, we also analysed the presence of the right to unionize by year of the constitution's adoption. The right to unionize is recognized in the Universal Declaration of Human Rights (UN General Assembly 1948), the International Covenant on Civil and Political Rights (UN General Assembly 1966a), and the International Covenant on Economic, Social, and Cultural Rights (UN General Assembly 1966b). More recently, the 1998 ILO Declaration on Fundamental Principles and Rights at Work recognized the right to unionize as the first of four fundamental principles and rights at work (ILO 1998). We categorized constitutions into six time periods: those introduced before 1970, in 1970 – 1979, 1980 – 1989, 1990 – 1999, 2000 – 2009, and 2010 – 2014. Several important historical events that influenced constitutional development around the world occurred across these decades along with increasing globalization as aviation became more affordable and information technology expanded. However, the events that triggered constitutional change in different countries vary and overlap. To take one example, the constitutional revolution in Latin America (1983 – 1994) partially overlapped with the period of state-building following the collapse of the USSR (1989 – present). In the absence of distinct global historical periods of constitutional development, we categorized constitutions by decade of adoption to examine trends. Year of constitutional adoption is used instead of year of most recent amendment to assess change over time because most constitutional rights are added at the time of first passage and constitutions vary as to difficulty of amendment.

Finally, to examine whether fundamental protections of the right to unionize have been weakened in the wake of the global financial crisis, we compare the presence of the right to unionize for constitutions in force as of August 2007 to those in force as of May 2014.

## Results

### *Right to Unionize by Region*

More than three-quarters of constitutions around the world guarantee citizens the right to unionize. In France, the constitution guarantees that ‘[a]ll men may defend their rights and interests through union action and may belong to the union of their choice’ (Const. France, 1958 [amended to 2008], Preamble to the 27th of October 1946 Constitution). Similarly, in Nicaragua, the constitution stipulations that ‘[f]ull labor union freedom exists in Nicaragua. Workers shall organize themselves voluntarily in unions, which shall be constituted in conformity with that established by the law. No worker is obliged to belong to a particular union or to resign from the one to which he/she belongs. The full autonomy of organized labor is recognized and the traditional rights of the unions are respected.’ (Political Const. Republic of Nicaragua, 1986 [amended to 2014], Article 87).

An additional three constitutions guarantee the right to unionize, but allow for exceptions. In Guatemala, the ‘right of free trade unionization [...] can be exercised without any discrimination and without being subject to previous authorization’ however, this right is restricted to natural-born citizens: ‘[o]nly Guatemalans by birth can become involved in the organization, management, and advising of trade unions’ (Political Const. Republic of Guatemala, 1985 [amended to 1993], Article 102). Bangladesh and India both guarantee citizens the right to unionize but allow for the entire right to be abridged under certain circumstances. For example, Article 19 of India’s constitution states that ‘[a]ll citizens shall have the right [...] to form associations or unions or co-operative societies,’ but the constitution goes on to state that ‘no law giving effect to the policy of the State towards securing [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by

article 14 or article 19’ (Const. India, 1949 [amended to 2012], Articles 19 and 31).

Bangladesh allows for similarly broad exceptions to the right to unionize.

An additional 19% of constitutions do not specifically guarantee the right to unionize, but do guarantee the right of association more generally. For example, Indonesia’s constitution does not specifically mention the right to unionize, but does guarantee that ‘[e]very person shall have the right to the freedom to associate, to assemble and to express opinions’ (Const. Indonesia, 1945 [amended to 2002], Article 28). Once guarantees of the right of association or assembly are also included, only three percent of constitutions do not guarantee any protection of the right to unionize for citizens.

Constitutional guarantees of the right to unionize are most common in Sub-Saharan Africa where 94% of constitutions guarantee this right. In contrast, East Asia and Pacific is the only region where a minority of countries – 43% – guarantee the right to unionize. Whereas all countries in Europe and Central Asia, South Asia, and Sub-Saharan Africa guarantee either the right of association or the right to unionize, 3% of constitutions in the Americas, 10% in South Asia and Pacific, and 11% of constitutions in the Middle East and North Africa do not guarantee either the constitution right to unionize or of association/assembly.

Table 1: Constitutional Guarantees of the Right to Unionize for Citizens by Region

|                     |             |          |                       |                         |                              |            |                    |
|---------------------|-------------|----------|-----------------------|-------------------------|------------------------------|------------|--------------------|
| Level of protection | All regions | Americas | East Asia and Pacific | Europe and Central Asia | Middle East and North Africa | South Asia | Sub-Saharan Africa |
|---------------------|-------------|----------|-----------------------|-------------------------|------------------------------|------------|--------------------|

|  |              |          |             |             |             |            |             |
|--|--------------|----------|-------------|-------------|-------------|------------|-------------|
| No relevant provisions   | 8 (3%)       | 1 (3%)   | 3<br>(10%)  | 0 (0%)      | 2<br>(11%)  | 0 (0%)     | 0 (0%)      |
| Right of association or assembly guaranteed, but not right to unionize | 38<br>(20%)  | 4 (11%)  | 14<br>(47%) | 10<br>(19%) | 5<br>(26%)  | 2<br>(25%) | 3 (6%)      |
| Guaranteed to citizens, but exceptions are permitted                   | 3 (2%)       | 1 (3%)   | 0 (0%)      | 0 (0%)      | 0 (0%)      | 2<br>(25%) | 0 (0%)      |
| Guaranteed to citizens   | 146<br>(76%) | 29 (83%) | 13<br>(43%) | 43<br>(81%) | 12<br>(63%) | 4<br>(50%) | 45<br>(94%) |

### *The Right to Unionize by Era*

Despite concerns that increased globalization over time has weakened trade unions, constitutional guarantees of the right to unionize are more common in constitutions that were adopted more recently. Nearly 90% of constitutions adopted in 2010 or later guarantee the right to unionize compared to only 63% of those adopted before 1970, 70% of those adopted in the 1970's, 82% in the 1980's and 1990's, and 83% in the 2000's. No constitution adopted since 1990 includes exceptions to the right to unionize for citizens. Saudi Arabia has the only constitution adopted since 1990 that guarantees neither the right to unionize nor the right of association/assembly to citizens. Libya and Vietnam are the only two constitutions adopted since 2010 that do not explicitly guarantee the right to unionize, but both contain guarantees of the right of association or assembly. Libya's transitional constitution guarantees citizens 'freedom of assembly, freedom of demonstration and freedom of peaceful strike' (Const. Charter Libya, 2011 [amended to 2012], Article 14). Similarly, Vietnam's 2013 constitution

guarantees that ‘[t]he citizen shall enjoy the right [...] to assemble, form associations and hold demonstrations’ without explicitly mentioning trade unions (Const. Vietnam, 2013, Article 25).

Table 2: Constitutional Guarantees of the Right to Unionize for Citizens by Year of Constitutional Adoption

| Level of protection  | Before 1970 | 1970 – 1979 | 1980 – 1989 | 1990 – 1999 | 2000 – 2009 | 2010 – 2014 |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| No relevant provisions   | 4 (10%)     | 1 (4%)      | 0 (0%)      | 1 (2%)      | 0 (0%)      | 0 (0%)      |
| Right of association or assembly guaranteed, but not right to unionize | 11 (27%)    | 7 (26%)     | 4 (18%)     | 10 (16%)    | 4 (17%)     | 2 (11%)     |
| Guaranteed to citizens, but exceptions are permitted                   | 1 (2%)      | 1 (4%)      | 1 (5%)      | 0 (0%)      | 0 (0%)      | 0 (0%)      |
| Guaranteed to citizens   | 25 (61%)    | 18 (67%)    | 17 (77%)    | 50 (82%)    | 19 (83%)    | 17 (89%)    |

Similarly, comparing the constitutional provisions in force in August 2007 before the global financial crisis to those in force in May 2014, we find no support for the idea that constitutional support of trade unions has weakened in response to the global financial crisis either in constitutions that have been newly adopted or those that have been amended. The new constitutions of the Maldives and South Sudan during that time period introduced guarantees of the right to unionize. For example, in 2007, the Maldives 1932 constitution

guaranteed ‘[p]ersons shall be free to form societies and associations’ (Const. Maldives, 1932 [amended to 1998, Article 27]). The constitution adopted in 2008 expanded on this guarantee to ensure that ‘[e]veryone has the freedom to form associations and societies, including [...] the right to form trade unions, to participate or not participate in their activities’ (Const. Maldives, 2008, Article 30). While Myanmar’s new constitution did not include an explicit guarantee of the right to form and join trade unions, it does included a guarantee of the right of association.

In addition the stronger guarantees introduced when new constitutions were adopted from 2007 to 2014, amendments also strengthened the right to unionize. For example, in 2011, Jordan’s constitution was amended to include unions in the following provision ‘Jordanians shall have the right to establish societies, unions and political parties’ (Const. Jordan, 1952 [amended to 2011], Article 16). A strengthening of constitutional provisions was also seen in Norway which has a strong history of trade unions. To celebrate the 200<sup>th</sup> anniversary of the Norwegian Constitution, many human rights were added to the constitution in 2014. Prior to 2014, the Norwegian constitution included no guarantee of the right to unionize, associate, or assemble. The new amendments introduced guarantees that ‘[e]veryone has the right to form, join, and withdraw from associations, including trade unions’ (Const. Norway, 1814 [amended to 2014], Article 101).

A weakening of the right to unionize was only observed in Jamaica. In 2011, Jamaica amended its constitution to provide for a charter of fundamental rights and freedoms. In doing so, the clause that specified the ‘freedom of peaceful assembly and association’ includes ‘in particular to form or belong to trade unions’ was repealed from the constitution and not replaced (Const. Jamaica, 1962 [amended to 2011], Article 23).

### *Guarantees and Exceptions to the Right to Unionize for Specific Groups*

Less than half of constitutions explicitly guarantee the right to unionize to specific groups. Guarantees of the right to unionize on the basis of gender is the most common at 40%, followed by explicit guarantees of the right to unionize regardless of religion (30%) and ethnicity (28%). For example, Cambodia’s constitution states that ‘Khmer citizens of either sex shall have the right to form and to be member of trade unions’ (Const. Cambodia, 1993 [amended to 2008], Article 36). Ethiopia provides guarantees of the right to unionize to many specific groups, stating ‘[e]very Ethiopian national, without any discrimination based on color, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights: [...] to be a member of his own will of a political organization, labour union, trade organization, or employers’ or professional association’ (Const. Ethiopia, 1994, Article 38). Only 13% of constitutions explicitly extend the right to unionize to foreign citizens. For example, the constitution of the Dominican Republic guarantees that ‘[f]oreigners have in the Dominican Republic the same rights and duties as nationals’ and that ‘[a]mong others, basic rights of the workers are: the syndical freedom, [...], collective negotiation’ (Const. Dom. Rep., 2010, Article 25 and 62).

Table 3: Constitutional Guarantees of the Right to Unionize for Specific Groups

| Level of protection                                    | Sex/gender | Ethnicity   | Religion    | Foreign Citizens |
|--|------------|-------------|-------------|------------------|
| No relevant provisions                                 | 49 (25%)   | 44<br>(23%) | 44<br>(23%) | 46<br>(24%)      |
| Exceptions to Right to Unionize for Group              | 0 (0%)     | 1 (1%)      | 1 (1%)      | 6 (3%)           |
| Guaranteed to citizens, but not specifically for group | 66 (34%)   | 93<br>(48%) | 89<br>(46%) | 115<br>(60%)     |

|                                  |          |          |          |          |
|----------------------------------|----------|----------|----------|----------|
| Guaranteed specifically to group | 78 (40%) | 55 (28%) | 59 (30%) | 26 (13%) |
|----------------------------------|----------|----------|----------|----------|

A few constitutions place exceptions on the exercise of the right to unionize for specific groups. The most common are exceptions for foreign citizens. Bulgaria, Costa Rica, Guatemala, Kyrgyzstan, Papua New Guinea, and Seychelles explicitly allow for exceptions to foreign citizens' right to unionize. For example, in Costa Rica '[f]oreigners are prohibited from exercising direction or authority in unions' (Const. Costa Rica, 1949 [amended to 2011], Article 60). Similarly, Papua New Guinea's constitution states that '[e]very person has the right peacefully to [...] form or belong to, or not to belong to [...] industrial organizations [...] except to the extent that the exercise of that right is regulated or restricted by a law [...] that imposes restrictions on non-citizens' (Const. Papua New Guinea, 1975 [amended to 2014], Article 47).

## Discussion

The right to join and form unions is included as a fundamental right in the UN Declaration on Human Rights and more than three-quarters of the world's constitutions explicitly guarantee citizens the right to unionize. East Asia and the Pacific is the only region in the world where a minority of constitutions guarantee this fundamental right. Despite concerns about the effect of increasing globalization or the economic crisis on trade unions, constitutions guarantees of the right to unionize are more common in constitutions adopted more recently. Nearly 90% of constitutions adopted in 2010 or later guarantee the right to unionize to citizens compared to only 61% of constitutions adopted prior to 1970. Constitutional guarantees of the right to unionize to specific groups are less common, but 40% of constitutions explicitly women the right to unionize and around 30% explicitly

guarantee this right extends regardless of ethnicity or religion. While 13% of constitutions explicitly guarantee the right to unionize to foreign citizens, six constitutions allow for exceptions to this right for foreigners.

However, despite strong provisions guaranteeing the right to unionize in many countries and international agreement on the importance of this fundamental right, 46 countries do not have any explicit constitutional guarantee of the right to unionize. While the vast majority of these countries guarantee the right of association or assembly, more research into case law is needed to better understand whether these provisions have been translated into strong protections of workers' right to unionize in practice.

Similarly, while guaranteeing a constitutional right to unionize is a crucial first step to ensuring workers can organize and ensure their voices are heard, this alone is not sufficient. More research is needed to better understand whether these constitutional protections are being translated to legislation and real protections for workers' rights.

Although this study provides a comprehensive analysis of the right to unionize in the worlds' constitutions, it also has important limitations. Currently, we are limited to examining the constitutional right to unionize at two specific points in time: 2007 and 2014. As data on legal rights and employment outcomes become available over a longer period of time, research using longitudinal techniques will allow us to examine the impact of constitutional changes on collective bargaining and measures of well-being for workers. Future research should examine whether constitutions that are more supportive of collective bargaining over time result in stronger labor legislation, stronger social protection floor legislation, and better health and economic outcomes for all citizens. Research should also investigate how constitutional limits on the right to unionize or guarantees of the right to strike impact these outcomes. Finally, studying how the right to unionize has been implemented in countries around the world could provide important lessons to the barriers

that continue to persist in ensuring that workers' voices are heard and that their rights are protected both in the workplace and in society.

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